



STATE OF INDIANA

MICHAEL R. PENCE, Governor

PUBLIC ACCESS COUNSELOR
LUKE H. BRITT

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)234-0906
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

January 6, 2016

Ms. Jaime Cullison
108 White Ash Drive
Hymera, Indiana 47855

Re: Formal Complaint 15-FC-323; Alleged Violation of the Open Door Law by the Town of Hymera

Dear Ms. Cullison:

This advisory opinion is in response to your formal complaint alleging the Town of Hymera ("Town") violated Open Door Law ("ODL"), Ind. Code § 5-14-1.5-1 *et. seq.* The Town has not responded despite an invitation to do so on December 9, 2015. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on December 9, 2015.

BACKGROUND

Your complaint dated November 30, 2015 alleges the Town of Hymera violated the Open Door Law by taking official action outside of a public meeting. You also contend there was a violation dated in June 2015. Pursuant to Ind. Code § 5-14-5-7(a)(1), all complaints must be filed within 30 days of when the violation occurred or within 30 days that you became aware of the violation. Because the June meeting was advertised in the paper, you should have known of the violation. Therefore, your second complaint is considered untimely and will not be addressed.

You also include several other complaints alleging violations between June and October 2015. You clearly were aware of these violations, as you have provided pictures as evidence of these alleged violations and since your husband was the previous town marshal. Therefore, you had notice of these alleged violations and therefore, these complaints are untimely. *See Ind. Code § 5-14-5-7(a)(1).*

Your sole remaining complaint indicates that on November 24, 2015, the Town held a special meeting. You contend that a week prior, two board members offered an individual the position of marshal without any prior discussion of the appointment. You allege the special meeting on November 24, 2015 was to ratify the actions of these board members which had already been decided behind closed doors.

ANALYSIS

It is the intent of the Open Door Law (ODL) the official action of public agencies be conducted and taken openly, unless otherwise expressly provided by statute, in order that the people may be fully informed. See Ind. Code § 5-14-1.5-1. Accordingly, except as provided in section 6.1 of the ODL, all meetings of the governing bodies of public agencies must be open at all times for the purpose of permitting members of the public to observe and record them. See Ind. Code § 5-14-1.5-3(a).

"Meeting" means a gathering of a majority of the governing body of a public agency for the purpose of taking official action upon public business. Ind. Code § 5-14-1.5-2(c). "Public business" means "any function upon which the public agency is empowered or authorized to take official action." Ind. Code § 5-14-1.5-2(e). "Official action" is very broadly defined by our state legislature to include everything from merely "receiving information" and "deliberating" (defined by Indiana Code 5-14-1.5-2(i) as discussing), to making recommendations, establishing policy, making decisions, or taking a vote. Ind. Code § 5-14-1.5-2(d). A majority of a governing body that gathers together for any one or more of these purposes is required to post notice of the date, time and place of its meetings at least forty-eight (48) hours in advance of the meeting, not including weekends or holidays. Ind. Code § 5-14-1.5-5(a).

It is well settled and recognized a public governing body meeting behind closed doors to avoid Open Door Law requirements is not permitted. Here, the alleged official action is the hiring of a town marshal. You contend the Town Council members ratified the improper action on November 24, 2015; however, an offer of appointment was made without any public discussion. Without the benefit of a response from the Town, I cannot say conclusively whether a closed door discussion took place; however, there is sufficient evidence to infer this situation occurred. The Town has been offered an opportunity to provide a rebuttal and has not done so.

CONCLUSION

Based on the foregoing, it is the Opinion of the Public Access Counselor the Town of Hymera violated the Open Door Law.

Regards,

A handwritten signature in black ink, appearing to read 'LHB', with a long, sweeping horizontal line extending from the bottom of the signature.

Luke H. Britt
Public Access Counselor